

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

OCT 31 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2007-0005-PR
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
STEVEN MICHAEL FERNANDEZ,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. CR2004-268

Honorable R. Douglas Holt, Judge

REVIEW DENIED

Steven Michael Fernandez

Tucson  
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Steven Fernandez was convicted of attempted administration of a narcotic drug, a class three felony, and endangerment, a class six felony. The trial court sentenced him to concurrent, slightly aggravated prison terms, the longest of which was 10.5 years. After appointed counsel notified the court she was unable to find a colorable claim to raise, Fernandez filed a pro se petition for post-conviction relief

pursuant to Rule 32, Ariz. R. Crim. P., which the trial court summarily dismissed. Fernandez ultimately filed a petition for review from that dismissal.

¶2 The record shows Fernandez was sentenced in May 2005. He filed his first petition for post-conviction relief in February 2006, which the trial court summarily dismissed in May 2006. Six months later, in November 2006, Fernandez filed a “Motion for Reconsideration and to Amend Pleadings,”<sup>1</sup> a second petition for post-conviction relief, and a request that advisory counsel be appointed. A few days later, in December 2006, the trial court denied relief on all of the pleadings Fernandez had filed in November, explaining in detail why it had done so. In April 2007, the trial court denied Fernandez’s subsequent request that advisory counsel be appointed, summarized the post-conviction history of this matter, and inquired why Fernandez had waited six months after his first post-conviction petition was dismissed to file his second petition and the motion for reconsideration of the court’s ruling on his first petition. The trial court stated it did not believe Fernandez’s claim that he had mailed the motion for reconsideration and his second petition in May 2006, even though they bore a May signature date; rather, the court found that Fernandez had mailed them in November, the date they were filed in the superior court, and that Fernandez had backdated them to May. The trial court concluded that the most recent request for advisory

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<sup>1</sup>The motion for reconsideration, in which Fernandez raised, *inter alia*, new issues not presented to or ruled upon by the trial court, was untimely. See Ariz. R. Crim. P. 32.9(a) (motion for rehearing must be filed “within fifteen days after the ruling of the court”).

counsel, the motion for reconsideration, and the second petition for post-conviction relief were untimely and that the court, in any event, had found “no new issues, no new evidence, no hint of ineffective assistance of counsel by any standard.”

¶3 In June 2007, Fernandez filed the petition for review now before us, in which he challenges the trial court’s May 2006 ruling (denying the first Rule 32 petition), and its December 2006 ruling (denying the second Rule 32 petition, the motion for reconsideration of the May 2006 ruling, and the denial of the appointment of advisory counsel). Because this petition, filed more than one year after the trial court ruled in May 2006, and six months after it ruled in December 2006, is untimely, we deny review. *See* Ariz. R. Crim. P. 32.9(c) (petition for review must be filed “[w]ithin thirty days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing”). From the record before us, it does not appear the trial court granted Fernandez leave to file a delayed petition for review, nor does Fernandez claim he was granted such leave. Moreover, Fernandez apparently did not present the trial court with any ground to justify his late filing of this petition. *See State v. Pope*, 130 Ariz. 253, 255-56, 635 P.2d 846, 848-49 (1981) (although time limits of Rule 32.9 are not jurisdictional, defendant must present trial court with valid reason to excuse noncompliance with rule’s time limits).

¶4 Finally, we decline to address the issues raised in Fernandez’s two “objections” to the state’s response to the petition for review, which we will treat as replies thereto. In his first objection, Fernandez raises new issues not previously presented to the

trial court or addressed in the state’s response to the petition for review. Rule 32.9(c)(2) provides that a reply to a petition for review “shall be limited to matters addressed in the response.” We therefore will not address those issues raised for the first time in the reply. Because the second objection, filed three months after the state filed its response to the petition for review, is untimely, we likewise do not address it. *See* Ariz. R. Crim. P. 32.9(c)(2) (reply to petition for review must be filed “within 10 days after the service of a response”). We note, however, that Fernandez has correctly observed that the state’s response to the petition for review is void of any citations to the record.<sup>2</sup> We urge counsel to heed the language of Rule 32.9(c)(1) and (2), which requires that a response to a petition for review “contain specific references to the record.” Our decision to deny review, however, would have been the same even if the state had not filed any response.

¶5 Because it is untimely, the petition for review is denied.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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<sup>2</sup>Although the response contains one citation to the sentencing transcript, the cited pages of that document are not part of the record on review.

GARYE L. VÁSQUEZ, Judge